87-2065

Supreme Court, U.S.
FILED
JUN 17 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Term, 1988

JOHN A. RUZA, JR., Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BURTON A. ROSE, ESQUIRE
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N.E. Cor. 8th & Locust Sts.
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Attorney for Petitioner

QUESTIONS PRESENTED

1. Has not the Pennsylvania Superior Court erred as a matter of Federal Constitutional Law in concluding that the circumstances presented by this case establish a break in the chain of causation between Petitioner's illegal detention and his subsequent confession as would purge the statement of the taint of the primary illegality?

2. Should not this Court remand this matter to the Pennsylvania appellate courts to determine under what circumstances your Petitioner's detention was achieved and whether his confession was derived from factors independent of any primary illegality?

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CONSTITUTIONAL PROVISION INVOLVED

This case involves the Fourth Amendment of the United States Constitution, which states as follows:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by Oath, or affirmation and particularly describing the place to be searched, and the persons or things to be seized."

GROUNDS FOR JURISDICTION

On April 19, 1988, the Supreme Court of Pennsylvania denied this Petitioner's Petition for Allowance of Appeal from the adverse Judgment and Decision of the Pennsylvania Superior Court dated October 2, 1087. This Court's jurisdiction is therefore invoked under 28 United States Code, Section 1257.

STATEMENT OF THE CASE

On May 20, 1979, a robbery occurred at Valle's Steak House in Springfield Township, Delaware County, Pennsylvania. The victim of that robbery allegedly identified this Petitioner as the perpetrator of that crime and told the Police that the Petitioner stole weekend receipts from the restaurant safe while armed with a knife.

On February 6, 1981, the Petitioner was arrested in the DeKalb County, Georgia pursuant to a road block. Upon checking identification papers, the Petitioner was detained pending his being transferred to custody of Federal Authorities, which occurred the next day, February 7, 1981.

While the Petitioner was in the custody of Federal Bureau of Investigation agents and in route to Fulton County Prison from his initial place of confinement, DeKalb County Prison, Petitioner was interrogated concerning

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the events related to this robbery. According to these agents, the Petitioner at that time confessed to his involvement in this crime. During this trip, the Petitioner was in the rear seat of the agents' vehicle with his hands cuffed behind him. The agents testified that they had provided the Petitioner with his Miranda warnings.

Subsequently, the Petitioner was arraigned before a Federal Magistrate based upon a federal charge of Flight to Avoid Prosecution. On February 13, 1981, the Petitioner was transported to Pennsylvania and arraigned in Delaware County on these charges on February 26, 1981.

The record indicates that the Petitioner was stopped in his vehicle on February 6, 1981 in DeKalb County Georgia as a result of a road block where each and every vehicle was apparently stopped. As Petitioner testified at the suppression hearing before the Court of Common Pleas of Delaware County, he was told

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by the DeKalb County Police that his vehicle was being checked along with other cars for identification rather than for any motor vehicle violation. It was only after Petitioner's identification was taken from him that he was taken into custody on the outstanding warrant.

On May 8, 1981, the Court denied the Motion to Suppress Evidence and the matter proceeded to trial before a jury, which returned a verdict of guilty as charged on July 29, 1981.

On August 30, 1982, having denied post-verdict relief, the Court sentenced the Petitioner to a total term of five to fifteen years imprisonment.

A timely appeal was filed with the Pennsylvania Superior Court, which reversed the Judgments of sentence in this case on the ground that Petitioner was denied his right to a preliminary hearing. However, the Supreme Court of Pennsylvania reversed that decision

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and held that a preliminary hearing was not warranted here; Commonwealth vs. Ruza, 551 A.2d 808 (Pa., 1986). The Superior Court thereafter considered all of the other issues which were presented by this appeal and in its Opinion dated October 2, 1987, annexed hereto as Exhibit "A", denied relief. Attached hereto as Exhibit "B" is the Order dated April 22, 1988 by virtue of which the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal in this case.

The Petitioner has served approximately two and one-half of the five year minimum sentence in this case and remains on bail as set by the lower Court pending the outcome of the direct appeal here.

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REASONS FOR GRANTING THE WRIT

PENNSYLVANIA COURTS HAVE ERRED IN THEIR APPLICATION OF THE "FRUIT OF THE POISONOUS TREE" DOCTRINE, WARRANTING REMAND.

The Petitioner has challenged the admission into evidence of his confession to the federal agents on the ground that it was the fruit of a poisonous tree, to wit, the Petitioner having been illegally detained pursuant to a road block conducted by officials of the DeKalb County Police Department in Georgia on February 6, 1981. Petitioner has also claimed that he was deprived of the effective assistance of counsel to which he was constitutionally entitled because of the failure of prior counsel to argue this contention on his behalf at suppression proceedings and in post-verdict/direct appeal litigation.

Although this road block occurred in Georgia, Petitioner argued that the

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Pennsylvania Courts should have granted suppression of his tainted confession since the admissibility of that statement would have been offensive to Pennsylvania rules of evidence as well as to the Fourth Amendment of the United States Constitution, citing Elkins vs. United States, 364 U.S. 206 (1960) and Commonwealth vs. Bighum, 452 Pa. 554 (1973). In 1981, there was no authorization under Pennsylvania Law for a vehicular road block and, accordingly, the Petitioner has contended that his rights against unreasonable search and seizure under both the Federal and Pennsylvania Constitutions were violated by the circumstances of his illegal detention and subsequent admissions to the authorities in Georgia. See Commonwealth vs. Tarbert, 535 A.2d 1035 (Pa., 1987), where the Pennsylvania Supreme Court cited this Court's decision of Delaware vs. Prouse, 440 U.S. 648 (1979), for the proposition that a systematic road block may be constitutional provided that its

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intrusiveness is reduced to a constitutionally acceptable degree by the manner in which it is managed and conducted.

Petitioner had requested that the Pennsylvania appellate courts remand this matter to the lower court for the purpose of providing a full record to determine the full range of circumstances under which this road block and detention occurred. In denying such relief, the Pennsylvania Superior Courts held (and the Pennsylvania Supreme Court, by denying a Petitioner for Allowance of Appeal, accepted) that without deciding whether or not Petitioner had a claim of arguable merit concerning the ineffective assistance of prior counsel in failing to properly raise and advance the road block issue, pursuant to Strickland vs. Washington, 104 SCt 2052 (1984) and Commonwealth vs. Pierce, 527 A.2d 973 (Pa., 1987), Petitioner could not have been prejudiced since his confession to the federal agents was, in the view of the Superior Court,

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"sufficiently attenuated" from the primary taint of any illegal stop and detention as to render it admissible. Citing this Court's decision in Brown vs. Illinois, 422 U.S. 590 (1975), the Pennsylvania Superior Court held that, "The voluntariness of the statements, their substantial separation by time and place from the initial car stop, and the fact that the officers who questioned appellant were of a jurisdiction different from that of the officers who made the stop are circumstances sufficient to have purged the primary taint of the road block, even if it were found to have been illegal" (Exhibit "A", page 13).

With these conclusions, your Petitioner respectfully disagrees and urges this Court to grant the Petition for a Writ of Certiorari and cause this matter to be remanded to the Pennsylvania Courts in order to provide the full and complete factual record which your Petitioner has previously sought.

That the Pennsylvania Courts have erred

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in their attenuation analysis is clear. Under Wong Sun vs. United States, 371 U.S. 471 (1963), the burden is upon the prosecution to establish that the evidence challenged as being tainted by the Fourth Amendment violation has come about as a result of "an act of free will" sufficient to purge the primary taint. In the present case, this Court cannot be satisfied that the alleged Fourth Amendment violation was not "unduly exploited". Westover vs. United States, 384 U.S. 436, 496 (1966). Here, the authorities unconstitutionally and unlawfully removed the Petitioner from his vehicle at a road block and placed him into custody without the faintest scentilla of criminal wrongdoing. On the following day, he was transported from one Georgia Prison to another; in the course of that transit, he was questioned by two federal agents while he was handcuffed and isolated in their vehicle. Petitioner respectfully submits that the factors cited in the Superior

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Court of Pennsylvania decision are inadequate as a matter of Federal Constitutional Law to establish the sort of "intervening events", Dunaway vs. New York, 442 U.S. 200 (1979), which will break the chain of causal connection between the Petitioner's unlawful detention and subsequent confession.

This is not a case like Wong Sun, supra, where the confession was obtained several days after the arrest in question and was preceded by both an arraignment and the accused's release from custody on his own recognizance.

As this Court stated in Brown vs. Illinois, supra, the key factors to consider on this issue are the temporal proximity of the arrest and the confession, the presence of intervening circumstances and the purpose and flagrancy of the official misconduct. 422 U.S. at 603. In Taylor vs. Alabama, 457 U.S. 687 (1982), this Court stated that the fact that the Police conduct was neither flagrant nor purposeful cannot in and of itself cure

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the illegality of the initial arrest. In this case, this 3 prong analysis will reveal that the prosecution has not carried its burden.

In the instant case, Petitioner respectfully submits that a review of this record establishes the need for a remand to the lower Court for fact finding on the detention and attenuation issues. Morales vs. New York, 396 U.S. 102 (1969). Petitioner further submits that such a remand will result in findings that the Brown vs. Illinois standards have not been met here and that the Petitioner's confession was wrongfully admitted into evidence against him under both the Pennsylvania and Federal Constitutions.

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CONCLUSION

For all the reasons above expressed, your Petitioner, John A. Ruza, Jr., respectfully submits that this Honorable Court should grant this Petition for a Writ of Certiorari to review the decisions of the Pennsylvania appellate courts below, and that the interests of justice require that those Judgments be reversed and that this matter be remanded for further proceedings before the lower Courts.

Respectfully submitted,

BURTON A. ROSE, ESQUIRE
Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for a Writ of Certiorari has been served upon Dennis McAndrews, Esquire, Assistant District Attorney, Delaware County Courthouse, Media, Pennsylvania, 19063 via First Class Mail.

BURTON A. ROSE, ESQUIRE

DATED: 6/14/88

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COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR
	:	COURT OF
	:	PENNSYLVANIA
VS.	:	
	:	
JOHN RUZA,	:	NO. 2711 Phila.
Appellant	:	1982

Appeal from the Judgment of Sentence of August 30, 1982, in the Court of Common Pleas of Delaware County, Criminal Division No. 6747-79.

BEFORE: ROWLEY, KELLY AND WATKINS, JJ.

MEMORANDUM:

This case is on remand from the Supreme Court of Pennsylvania. Following the jury trial appellant was found guilty of robbery, aggravated assault, possession of an instrument of crime, and theft. Trial counsel filed post-trial motions. Before the trial court ruled on the motions, the court-appointed new counsel who filed a Post

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EXHIBIT "A"

Conviction Hearing Act petition,[1] alleging ineffective assistance of trial counsel. Following a hearing on these ineffectiveness claims, the trial court denied the post-trial motions and the PCHA petition and, five months later, sentenced appellant. Still represented by his second counsel, appellant filed an appeal from the judgment of sentence. The Superior Court reversed the judgment of sentence, quashed the information, and discharged appellant based upon the Commonwealth's failure to provide a preliminary hearing. The Commonwealth appealed from the Superior Court's Order to the Supreme Court which reversed the Superior Court and remanded the matter for disposition of issues raised in the direct appeal but not addressed in the Superior Court's opinion. Upon this remand, appellant's counsel petitioned the Superior Court to withdraw.

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[1] 42 Pa.C.S. §9541. Hereafter referred to as "PCHA."

The Superior Court granted this petition, and present counsel, appellant's third counsel, entered his appearance.

Appellant's second counsel raised the following issues in the direct appeal to the Superior Court which have yet to be decided by us on remand from the Supreme Court: 1) whether the trial court erred in permitting the Commonwealth's witnesses to testify concerning a federal flight warrant and therefore improperly charged the jury on this issue; 2) whether the trial court erred in denying appellant's motion to suppress his statement on the grounds that a) it was the produce of an improper stop and illegal arrest, b) it was introduced into evidence in violation of the intent and purpose of Commonwealth vs. Davenport, 471 Pa. 278, 370 A.2d 371 (1977), and c) it was taken from the defendant in violation of his Miranda rights; 30 whether the trial court erred in denying appellant's motion to dismiss for failure of

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the Commonwealth to show due diligence in compliance with Pa.R.Crim.P. 1100; 4) whether trial counsel was ineffective for a) failing to present witnesses necessary to appellant's defense, b) failing to request an in camera hearing with the trial judge in order to determine whether or not the trial judge should allow appellant's past record to be used against him, c) improperly advising appellant that his prior criminal record could be used against him, and d) failing to prepare properly for trial; and 5) whether the trial court erred in denying appellant's motion for a subpoena duces tecum for a computer printout showing information on appellant's cases.

Appellant's present counsel on remand argues three new issues which were not raised initially in the direct appeal, but were raised only after new counsel entered his appearance on remand from the Supreme Court: 1) whether appellant's second counsel was ineffective for failing to raise their

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effectiveness of trial counsel with respect to his failure to allege with specificity that appellant's statement to FBI agents was the tainted fruit of an illegal roadblock and should have been suppressed on that basis; 2) whether appellant's second counsel was ineffective for failing to raise the ineffectiveness of trial counsel for his failure to object to the jury charge with respect to the voluntariness of the confession; and 3) whether appellant's second counsel was ineffective for failing to preserve the issue of whether the trial court had a proper basis for instructing the jury as to appellant's flight.

As to the issues 3), 4) and 5) raised by appellant's second counsel on the initial appeal and now on remand, we are satisfied that the trial court adequately discussed and correctly decided them. Se trial court Opinion of October 15, 1982. We will address, however, the first two issues initially raised

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on appeal as well as the three new claims of ineffectiveness raised on remand by appellant's present counsel.

I

Appellant argues that at no time during the trial was any evidence introduced to show that appellant knew that he was wanted for the charges against him and, therefore, an instruction on flight was improper. The rule of law on this issue is,

> When a person commits a crime, knows that he is wanted therefore, and flees or conceals himself, such conduct is evidence of consciousness of guilt, and may form the basis in connection with other proof from which guilt may be inferred.

Commonwealth vs. Tinsley, 465 Pa. 329, 333, 350 A.2d 791, 792-93 (1976). Knowledge by the defendant that he is wanted for a crime need not be shown by direct evidence; circumstantial proof may be sufficient. Id. A variety of fact situations have been sufficient for circumstantial proof of knowledge by the defendant that he was wanted

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for a crime. See Commonwealth vs. Whack, 482 Pa. 137, 393 A.2d 417 (1978) (stabbing that occurred in November, 1975 and failure of appellant to appear again until January, 1976 following unsuccessful efforts to locate him at his home or the normal places he frequented was sufficient basis for a permissible inference that appellant was aware that he was being sought by police authorities for stabbing and that he deliberately attempted to conceal his whereabouts); and Commonwealth vs. Osborne, 433 Pa. 297, 249 A.2d 330 (1969) (a Commonwealth showing that appellant was at the scene of the crime and had been living under an assumed name since the time of the incident was enough evidence from which a reasonable inference could be drawn that appellant knew he was being sought).

In this case, even absent the testimony on the existence of a federal flight warrant to which appellant objects, there was sufficient evidence to warrant a charge to the

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jury on flight. The victim identified appellant and testified that appellant threatened to kill him if he ever told anyone that appellant committed the robbery. The victim also testified that shortly before leaving the scene of the crime, appellant told him not to call the police. Detective Burns testified that he made unsuccessful efforts to locate appellant following the incident. Agent Barry of the FBI testified that appellant confessed to the crime and to leaving for Atlantic City to gamble with the proceeds. Finally, extensive testimony described appellant's arrest almost two years later in Georgia. The foregoing evidence is sufficient for a reasonable inference to be drawn that appellant knew he was being sought. The trial court did not err by instructing the jury on this issue.

II

The trial court did not err in denying appellant's motion to suppress his statement.

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Appellant's contention that his statement was the product of an improper stop and illegal arrest must fail. Appellant has waived this issue with respect to the legality of the stop because the legality of the stop, as distinguished from the legality of the arrest, was not raised in the suppression motion.[2] Commonwealth vs. Bolden, ___ Pa. ___, ___, 406 A.2d 333, 335 (1979); Pa.R.Crim.P. 323(b), (d).

With respect to appellant's arrest after the car stop and after checking his identification, the trial court has adequately discussed and correctly decided the issue in its opinion of October 15, 1982.

With respect to appellant's contentions on the Miranda and Davenport issues, we affirm on the basis of the trial court's opinion of

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[2] The trial judge stated in his Opinion of October 15, 1982 that the initial car stop was legal. However, the fact that the trial court examined or ruled on the issue is not dispositive of whether the issue has been waived.

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October 15, 1982 and of the Suppression Court's Findings of Fact, Conclusions of Law, and Order of June 30, 1981.

III

We now turn to the claims of ineffectiveness which present counsel raises for the first time on remand from the Supreme Court. A claim of ineffectiveness of prior counsel must be raised at the earliest stage of the proceedings at which counsel whose ineffectiveness is being challenged no longer represents the defendant. Commonwealth vs. Hubbard, 472 Pa. 259, 276 n.6, 372 A.2d 687, 695 n.6 (1977). Appellant's present counsel raises the issue of prior counsel's ineffectiveness upon remand from the Supreme Court. As appellant's petition for Withdrawal of Prior Counsel and for Entry of Appearance of Present Counsel was granted, and as this is present counsel's first opportunity to present

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these issues, they are properly before us.[3]

Our Supreme Court recently confirmed that, once arguable merit is found, ineffectiveness claims are to be measured by two components. Commonwealth vs. Pierce, ___ Pa. ____, ____ A.2d ____ (No. 47 E.D. Appeal Docket 1986, filed June 9, 1987). First, we are to evaluate counsel's performance in light of its reasonableness. Id. We therefore evaluate each claim of ineffectiveness on the basis of these two components, once each claim is found to be of arguable merit.

Appellant argues that his second counsel was ineffective for failing to allege the ineffectiveness of trial counsel for his

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[3] See Commonwealth vs. Burton, 491 Pa. 13, 417 A.2d 611 (1980) wherein appellant's original counsel who represented him throughout trial and post-trial proceedings died after filing a brief, but before the case was listed for argument. Original counsel was then replaced and filed a second brief containing allegations of ineffectiveness of original counsel. The Supreme Court heard these issues, since they were counsel's first opportunity to present them. Id. at ___ n.1, 417 A.2d at 612 n.1.

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failure to seek the suppression of appellant's statements on the theory that they were the tainted fruit of an illegal roadblock. This claim of ineffectiveness has no arguable merit.

The circumstances under which appellant made the statements were sufficiently attenuated to purge the primary taint of the initial stop, even if it had been illegal.[4] Breaking the causal chain between an illegal stop and arrest and the statements made subsequent thereto requires that the statements meet the Fifth Amendment standard of voluntariness and that they be sufficiently an act of free will to purge the primary taint. Brown vs. Illinois, 422 U.S. 590, 602, 95 S.Ct. 2254, 2261, 45 L.Ed.2d 416, _____, (1975). The initial stop occurred on February 6, 1981. After checking appellant's

[4] Because of the basis of our disposition of this issue, it is unnecessary for us to decide whether the car stop itself was illegal.

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identification, the DeKalb County Police properly arrested appellant on an outstanding Florida drug trafficking charge. The FBI likewise properly obtained custody of appellant on the following day based upon a federal flight to avoid prosecution warrant. During appellant's transfer from the DeKalb County prison to the Fulton County federal prison, FBI agent Leary read appellant the Miranda warnings, and appellant replied, when asked, that he understood them. Appellant made the statements in question during the approximately thirty-five minute ride to the fulton County prison.• The voluntariness of the statements, their substantial separation by time and place from the initial car stop, and the fact that the officers who questioned appellant were of a jurisdiction different from that of the officers who made the stop are circumstances sufficient to have purged the primary taint of the roadblock, even if it were found to have been illegal. Because

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appellant's first claim of ineffectiveness has no arguable merit, we need not inquire into the reasonable basis of prior counsel's failure to raise the issue, or whether appellant was prejudiced thereby.

IV

Appellant asserts as his second claim of ineffectiveness that his second counsel did not raise the issue of trial counsel's failure to object to the inadequacies of the trial court's jury instructions on the issue of the voluntariness of appellant's confession. He alleges that the trial judge failed to include the following five elements in the instructions: 1) that truthfulness is not a factor to be considered in judging the voluntariness of the confession; 2) that the jury must determine voluntariness before it reaches the question of what weight the statement should be afforded; 3) that the custodial nature of the interrogation was a factor that the jury may consider in assessing

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voluntariness; 4) that a delay in the preliminary arraignment is an additional factor that the jury may consider in assessing voluntariness; and 5) that the burden of proof was upon the Commonwealth to show voluntariness. Appellant argues that trial counsel should have objected to the instructions on the basis of these omissions.

A trial court has broad discretion in phrasing its points for charge, and we must base our evaluation on an examination of the charge as a whole to determine whether it was fair or prejudicial. Commonwealth vs. Ohle, 503 Pa. 566, 582, 470 A.2d 61, 70 (1983). Error cannot be predicated on isolated excerpts of the charge, but rather on the general effect of the charge. Commonwealth vs. Woodward, 483 Pa. 1, 4, 394 A.2d 508, 510 (1978).

Even though a trial court determines, at the suppression stage of the proceedings, that a statement is admissible, the defendant may

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still attack the voluntariness of his or her confession at trial, and the jury may not consider the confession as evidence until it objectively determines that the confession was given voluntarily. Commonwealth vs. Motley, 472 Pa. 421, ____ A.2d ____ (1977). Se also Commonwealth vs. Coach, 471 Pa. 389, 370 A.2d 358 (1977). The Supreme Court has stated the relevant considerations in determining the voluntariness of a confession:

> all attending circumstances surrounding the e confession must be considered in this determination. These include: the duration and methods of interrogation; the length of delay between arrest and arraignment; the conditions of detainment; the attitudes of the police toward the defendant; defendant's physical and psychological state; and all other conditions present which may serve to drain one's power of resistance to suggestion or to undermine one's self-determination.

Commonwealth vs. Kichline, 468 Pa. 265, 279, 361 A.2d 282, 290 (1976).

We have reviewed the jury charge and have determined that the charge adequately conveys

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that considerations relevant to a determination of voluntariness.[5] Furthermore, we find no authority which states that a charge on voluntariness of a confession must specifically include a statement that truthfulness is not a factor in judging voluntariness, that a delay in the preliminary arraignment is a factor to be considered,or the the Commonwealth carried the burden of proof. The charge as a whole substantially and adequately set forth the considerations in an analysis of voluntariness. Therefore, appellant's second claim of ineffectiveness must fail for lack of arguable merit. We need not consider the reasonableness of counsel's

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[5] Appellant relies in part on the Pennsylvania Bar Institute, Suggested Standard Jury Instructions in Criminal Cases (PBI,SSJI) in support of his argument. We point out that, since the time of appellant's trial in 1981, these suggested instructions have been revised. A review of the record indicates that the trial court relied on the 1979 version of the PBI,SSJI, and that the instructions were substantially in accord with that version.

actions or whether appellant suffered prejudice.

V

Appellant's third claim of ineffectiveness again raises the issue of the trial court's flight charge to the jury. present counsel argues that trial counsel failed to object on the basis of hearsay to the testimony of Detective burns that he requested a federal flight warrant "based upon information that we had received regarding the defendant fleeing the area" (N.T., July 28, 1981, p. 92). He further argues that appellant's second counsel failed to preserve this issue. Appellant asserts that the admission of this testimony improperly provided an additional basis from which the jury could infer consciousness of guilt.

This claim has no arguable merit. Even if the statement of Detective Burns had been excluded on the basis of hearsay, the Commonwealth's next witness, Agent Stumpf,

mentioned the federal flight warrant at least five times, three of which were in response to questions during cross-examination by defense counsel, and none of which would have been excluded on hearsay grounds.

Furthermore, the court instructed the jury, following Detective Burns' statement quoted above, as well as on two other occasions during trial, that the jury was not to consider the witness' mentioning of the warrant as conclusive that appellant fled. Therefore, even if there had been error in admitting the testimony, the trial judge rectified and rendered harmless any prejudice that may have resulted. See Commonwealth vs. Rough, 275 Pa. Super. 50, 418 A.2d 605 (1980). A factor for consideration in assessing the impact of error, if any exists, is whether the court instructed the jury to disregard information improperly before it. Id. at 62, 418 A.2d at 611. We must assume that the jury obeyed the instructions and that the error, if

there was one, was rendered harmless. Id. For the foregoing reasons, appellant's third claim of ineffectiveness fails for lack of arguable merit. Therefore, we do not address the reasonableness of counsel's actions or whether appellant suffered any prejudice thereby.

Judgment of Sentence Affirmed.

Supreme Court of Pennsylvania

MARLENE F. LACHMAN, ESQ.
PROTHONOTARY
PATRICK TASSOS
DEPUTY PROTHONOTARY

Eastern District

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April 22, 1988

Burton A. Rose, Esquire
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Washington West Building
N.E.C. 8th and Locust Streets
Philadelphia, PA 19106

RE: Commonwealth of Pennsylvania v. John Ruza, Petitioner
NO. 847 E.D. ALLOCATUR DOCKET 1987

Dear Mr. Rose:

This is to advise you that the following Order has been endorsed on your Petition for Allowance of Appeal, filed in the above captioned matter:

"April 19, 1988.

Denied.

Per Curiam."

Madam Justice Stout did not participate in the consideration or decision of this case.

Very truly yours,

Patrick Tassos

PATRICK TASSOS
Deputy Prothonotary

/pj
cc: Dennis M. McAndrews, Esquire

Exhibit "5"

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